IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2085 OF 2006

The State of Maharashtra ...Applicant

Versus

Achyut Keshav Apate & Anr. ...Respondents

Shri S.R. Shinde, A.P.P for the Applicant.

CORAM : A. S. OKA, J.

DATE : NOVEMBER 27, 2006.

P.C.:

1. Submissions of the learned A.P.P were heard on the last date. By this Application, the State is seeking leave to prefer an Appeal against order of acquittal dated 26th January, 2006 passed by the Sessions Court. The acquittal is for the offences punishable under section 323, 341, 351 read with section 34 of the Indian Penal Code and section 3(i)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The case of the prosecution is that the younger brother of first informant is a school going boy by the name Mangesh. On 20th March, 2005 the first informant received a message that the Respondent No.1 has caught

the said boy Mangesh on the allegation that the said boy had committed theft. The first informant proceeded to the spot. The first Respondent informed him that the said Mangesh had committed theft of amount of Rs.50/- from his cash box. The first informant stated that Mangesh admitted to have committed theft of Rs.50/-. At that time Mangesh informed the first Respondent that the Respondents herein had beaten him by stick and wire till he lost his senses. Mangesh also alleged that the Respondents threatened to kill him. At the instance of the Respondents, parents of the boy were called. All the persons gathered there requested the first Respondent not to take action against Mangesh considering the fact that he was a school going boy. The first Respondent demanded compensation amount of Rs.10,000/-. It is alleged that there was a settlement and figure of Rs.5,000/- was agreed upon. The parents and other persons took away Mangesh with them. All these happened on 20th March, 2005 at about 7.30 p.m. The first Respondent lodged F.I.R on 23rd March, 2005 alleging commission of the aforesaid offences against the Respondents.

3. Perusal of the impugned Judgment and Order

shows that the learned Trial Judge has considered evidence of all the prosecution witnesses. The learned Judge referred to deposition of so called eye-witnesses Shivram and Kiran who did not depose about any injuries found on the person of Mangesh. The allegation of the first informant is that the said Mangesh was brutally assaulted by the Respondents on hands and legs. It is an admitted position that Mangesh was wearing a short pant at the time of incident. The learned trial Judge found substance in the case that the said boy Mangesh has stolen sum of Rs.50/- from the cash box of the Respondent No.1 and on account of settlement, the Respondent No.1 agreed to let off Mangesh without recording any complaint.

4. The learned Judge found that there was no evidence to show that any marks were found on the person of Mangesh when he was examined by the medical officer. This is relevant in the context of the fact that allegation is that the Respondents assaulted him by using the stick and wire. Apart from these aspects the learned Judge noted that there was gross unexplained delay of three days in lodging F.I.R. He also noted that when injured Mangesh was referred for

medical examination on 21st March, 2005, he did not disclose the incident to the medical officer. As regards offence alleged under the Atrocities Act the learned Trial Judge held that assuming that there was assault made by the Respondents, it cannot be said that the Respondents had a prior knowledge that the boy Mangesh was belonging to scheduled caste. The learned Judge has recorded a finding that the guilt of the Respondents is not established. The view taken by the learned Judge is a possible view which could have been taken on the basis of evidence on record. Merely because different view is possible, no case is made out for grant of leave. Application is rejected.

JUDGE